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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

May 23, 2001
AO-01-08

Howard D. Medwed, Esq.
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110

Re: Candidate's Conversion to Depository Candidate

Dear Mr. Medwed:

This letter is in response to your April 30, 2001 email for guidance regarding Cambridge City Councillor Kathy Born's current obligation to report to OCPF as a depository candidate.

You are the treasurer of the Kathy Born Election Committee ("the Committee"). You have indicated that Councillor Born does not intend to seek re-election in November. You had planned to continue fundraising, however, through the end of the year solely to satisfy the Committee's debt. You anticipate raising around four or five thousand dollars to pay off existing liabilities as well as cover fundraising and other administrative costs. You estimate that the Committee may have less than a thousand dollars left over to disburse upon dissolution in accordance with the campaign finance law.

You raised numerous concerns regarding the impact of the depository system on the Committee, including (1) the cost of opening a depository account for such a limited time; (2) your anticipated difficulty in finding a Cambridge bank willing to accept a depository account; and (3) the anticipated difficulty in finding vendors who will accept Committee checks for expenses in excess of \$50.

You indicate that the Committee will comply with the new reporting requirements if necessary. However, you believe that "the burden of compliance will be disproportionate to [the Committee's] activities." Accordingly, you have asked the following questions:

QUESTIONS AND ANSWERS

(1) If Councillor Born does not seek re-election and closes her campaign account on or before December 31, 2001 (or July 31, 2001¹), does the Committee have to comply with the depository account requirements?

Answer: No. The Committee may continue to report to the Cambridge City Clerk as a non-depository candidate as long as the Committee's financial activity is solely for the purpose of paying off debts incurred in the course of a prior election cycle.

(2) What is the deadline for the Committee to comply with the new campaign finance reporting requirements?

Answer: Notwithstanding the previous answer, the Committee must comply with M.G.L. c. 55, s. § 19 immediately if Councillor Born either (1) receives a contribution or makes an expenditure for any other purpose other than to defray the previous election debt, or (2) takes steps to qualify for nomination or election to a public office.

(3) Could OCPF waive compliance with the new depository account requirements based on special circumstances?

Answer: OCPF cannot waive compliance with M.G.L. c. 55, § 19, the depository reporting requirements. However, as discussed below, it is this office's opinion that the Committee would not be subject to § 19 under the circumstances set forth in your letter.

(4) Can the Committee, under the depository system, reimburse an individual who uses a personal credit card to make campaign expenditure in excess of \$50?

Answer: No. M.G.L. c. 55, § 19(c) prohibits reimbursement to individuals for expenditures made on behalf of a depository candidate or committee for any single expenditure in excess of \$50. See M-90-91.

DISCUSSION

The 2000 federal census recently established that there are over 100,000 people living in the City of Cambridge. As the result, candidates elected to the city council in Cambridge have become subject to new reporting requirements under the campaign finance law.

Specifically, these candidates are now subject to the depository reporting system set forth at M.G.L. c. 55, § 19. Section 19(a) compels depository candidates and their treasurers to designate and open a depository account for campaign committee funds "upon organization of said political committee, or upon becoming a candidate in accordance with the provisions of clauses (1) and (2) of the definition of candidate in section one." Pursuant to clauses (1) and (2) of § 1, a person becomes a candidate by either (1) receiving a contribution or making an expenditure to further his or her election to public office, or (2) taking steps to qualify for nomination or election to a public office.

¹ The filing deadline for candidates wishing to run for Cambridge city council in November 2001.

As the treasurer of a political committee organized before § 19 applied to Cambridge, you have stated that Councillor Born will not seek re-election in the fall. Accordingly, neither the Committee nor Councillor Born presently intend to raise or spend money to further her election to public office.

It is the position of this office that § 19 does not require the Committee to enter the depository system under these circumstances. This will continue to be the case as long as the Committee limits its activity to raising and spending money for the sole purpose of paying debts incurred in the course of a previous election cycle. We do not interpret § 19 as requiring an existing committee to enter the depository system unless the candidate is presently seeking, or has future plans, to be nominated or elected to public office. See M.G.L. §§ 1 & 19. The Committee may therefore continue to operate with this limited purpose and continue to report to the city clerk until existing liabilities are satisfied.²

Notwithstanding the foregoing, the Committee must open a depository account *immediately* if the councillor takes the necessary steps to get on the ballot in the fall or otherwise accepts a contribution or makes an expenditure for any other purpose other than to defray the previous election debt. See AO-93-05 (advising that a statewide candidate's committee did not have to open a depository account until the committee actually began to raise and spend money for her political future).

Please note that this opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:bp

² Of course, the Committee cannot dissolve while Ms. Born is an incumbent city councillor even if the Committee's account is closed prior to the expiration of her term.